No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1998

THOMAS P. COFFEY,

Petitioner

v.

DONALD COLLESTER, Judge of Superior Court, Morristown, New Jersey, State of New Jersey; WALTER THOMAS, Attorney of Stern, Lavinthal, Livingston, New Jersey; REGINALD STANTON, Manager of the Morristown Courthouse and Superior Court Judge of Morristown, State of New Jersey, J. PATRICK MONAHAN, Advisory Committee on Judicial Affairs for the State of New Jersey; GOVERNOR CHRISTINE TODD WHITMAN, State of New Jersey; (Judge Stanton, Mr. Monahan, and Governor Whitman are identified as the John Doe No. 1 of the original application to the Federal Court in Newark, New Jersey, and to the United States Court of Appeals for the Third Circuit, Philadelphia, Pennsylvania.); and MS. VICKI McINTOSH.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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47 pp

QUESTION PRESENTED FOR REVIEW

Whether it is acceptable and lawful under the Constitution of the United States of America and specifically the Fourteenth Amendment to the Constitution and immediately related decisions cited in the text, for a Superior Court Judge to act secretly on his own or through others to delete, alter, and transform sworn testimony taken on tape recorder and to do so outside the courtroom after testimony has been concluded, after the Judge has been removed from jurisdiction in the case many months following his decision, and to do so substantially in matters that impact upon the rights of persons, of property, and of the institutions of freedom in the United States of America today.

LIST OF PARTIES
TO THE PROCEEDINGS
IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals, Donald Collester, Judge of the Superior Court; Vicki McIntosh, Clerk of the Morris County Courthouse in charge of tape recordings; Walter Thomas, attorney, Livingston, New Jersey.

In the original application to the Federal Court in Newark, New Jersey, complaints were made about John Doe No. 1. John Doe No. 1 is herein identified as Judge Reginald Stanton, Manager of the Morristown Courthouse and Judge of the Superior Court, Morristown, New Jersey, who took no action with regard to the proven alteration, deletion, and transformation of sworn testimony; J. Patrick Monahan of the Advisory Committee on Judicial Affairs of the State of New Jersey, Trenton, New Jersey, who stated in writing that he had examined the tapes in question and there was no tampering; and Governor Christine Todd Whitman, who despite her Oath of Office to protect the rights of persons, of property, and of the institutions of freedom in the State of New Jersey stated in the transcripts connected with this case through her attorney Mansier that "she does not wish to be involved."

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28 U.S.C. §1254(1)

28 U.S.C.A. §1334

Fourteenth Amendment of the United States Constitution

The Rehabilitation Act, 29 U.S.C.A. §794

Title XIX of the Social Security Act, 42 U.S.C.A. §1396a

Title XIX of the Social Security Act, 42 U.S.C.A. §1396d

Title XIX of the Social Security Act, 42 U.S.C.A. §§1396

OPINIONS BELOW

The January 15, 1998, Judgment Order of the Third Circuit Court of Appeals whose judgment is herein sought to be reviewed, is at No. 96-5803, is unpublished and is reprinted in the Appendix to this Petition at page A-1. There was a Petition for Rehearing submitted by the Petitioner to the United States Court of Appeals asking for Rehearing In Banc and this Petition was denied on February 4, 1998. This judgment is also reprinted at Page A-2. The prior decision of the Honorable Judge William Walls of the United States District Court for the District of New Jersey, Newark, New Jersey, Docket No. 96-5803, District Court Civ. No. 96-CV-01654 was given in a Letter Memorandum, is unpublished and is reprinted in the Appendix to this Petition at Page A-3.

JURISDICTION

The Judgment Order of the Third Circuit Court of Appeals was entered on January 15, 1998 and the request for a Rehearing In Banc was rejected on February 4, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action was filed pursuant to 42 U.S.C.A. §1983 on the basis that substantial portions of relevant testimony given under oath were deleted, transformed, and altered by Judge Collester in action FM-27853-87, taking place in the Morristown Courthouse on June 15, 1993, June 16, 1993, and August 4, 1993. The Petitioner believes that under the Fourteenth Amendment to the United States Constitution and the various decisions mentioned in the Authorities his civil rights were violated in an abusive and inhumane manner, and that Judge Collester acted without the protection of judicial immunity. The Petitioner's daughter,

Cathleen, was subjected to inappropriate sexual questioning that was most objectionable and insofar as the financial statements made by his daughter, Jennifer, testimony concerning tens of thousands of dollars was deleted as was determined by the technician Ferdinand Mojica in the Recording Services Department of the Appellate Court of the State of New Jersey. Mr. Mojica's report is reprinted in the Appendix on Page A-10. It is essential to note that following Mr. Mojica's report concerning his analysis of the tape; the tape was recovered by Judge Collester or his agent and the evidence of a deletion was removed, leaving only a six second pause in contradiction to Mr. Mojica's statement that attorney Fruehling was engaged in a line of questioning. It can be established, and this matter must be emphasized in connection with the Doctrine of Judicial Immunity, that Judge Collester's jurisdiction had concluded with the appearance of Judge Robert Penza on January 28, 1994 prior to the date of the recovery of the tapes following Mr. Mojica's report. Therefore, Judge Collester was not acting with judicial immunity, but outside jurisdiction to remove the evidence of a crime committed in collaboration with the false inventory report of James Giordano and the subsequent robbery by Walter Thomas of hundreds of thousands of dollars from the trust which had never been defined, see page A-15.

STATEMENT OF THE CASE

A. Statement of Facts

Janet and Thomas Coffey were divorced on June 29, 1988, and it was agreed among other matters that Thomas Coffey would remain until his death as administrator of a trust he had established ten years earlier for his daughters, Mary, Jennifer, and Cathleen. He had paid the full tuition and living expenses of the three daughters through high school and through the most expensive colleges of their own choice in the United States of America, had given each daughter $100,000 on her 21st birthday, had bought each daughter a brand new

car, and had given the daughters $647,000 or the total product of the trust that he had been guided to make with the assistance of the Internal Revenue Service of the United States of America. Similar trusts were established for the education of poor children in Brooklyn; Manhattan; Cleveland, Ohio; and in other places throughout the United States. Twenty-six under privileged children have now graduated from high school or college, many of whom are continuing their studies in law, medicine, and accounting.

Without any examination of the trust materials, in August 1991 the attorney representing Janet Coffey in the divorce proceeding peremptorily ordered that the trust be turned over to his accountant and opened a legal proceeding before Judge Rocco D'Ambrosio to achieve this result. The first hearings were held on December 18, 1991 and January 24, 1992, and important alterations of relevant colloquy were made by D'Ambrosio after the close of the hearings. This can be established by the true tapes of what was said in the Courtroom and true tapes are in the possession of the Petitioner. By expert testimony it can be established that these tapes are unaltered tapes. Contrariwise, D'Ambrosio's tapes may be shown to have been greatly altered with an expert giving testimony that a moving van could be driven through the mistakes made by D'Ambrosio in attempting to remove relevant colloquy, to alter it, to delete, to replace, and to transform it. Similarly, Judge Donald Collester made changes in sworn testimony given under oath on June 15, 1993, and this can be established by the signed report of the technician of the Recording Services Department of the Appellate Court of the State of New Jersey. By expert testimony it can be established that the tapes presented by Donald Collester as tapes of what took place in FM-27853-87 show evidence of deletion in the opening and closing of the tape recording as well as in large gaps which, after filing, Collester recovered and deleted again. It should be emphasized that the argument of the Petitioner in this application to the Supreme

Court underlines the significant fact that Collester was removed from Jurisdiction in this matter by the appearance of Judge Robert Penza on January 28, 1994 to enforce Collester's decision; nevertheless, subsequently, in the month of April or May 1994 in an event following Jeffrey Newman's letter and Ferdinand Mojica's report when Collester was not serving as a judge and did not enjoy judicial immunity he and/or his agent removed evidence of the deletion of materials from the tape in order to cover up the crime of tape alteration and the removal of testimony concerned with tens of thousands of dollars belonging to the trust. For this reason Collester was able to receive falsified financial data from Karen Haber acting in a criminal fashion in the Court. Haber gave falsified data created by her with the collaboration of James Giordano who had removed himself from the case out of fear when his "errors" were discovered regarding his inventory that was twice in error by more than half a million dollars, that took no account of the diamonds or the corporation documents and $221,000 worth of federal bonds stolen from the safety deposit box in which the trust was housed. Specific reference should also be made to the criminal nature of the proceeding in connection with false inventory of the trust, inaccurate written statements to the Court, denial under oath by an attorney who worked for Coffey for 20 years that he knew him, the failure of witnesses to turn up as stated by Karen Haber in Book 2 of the transcript of the case, the subornation to perjury on the part of witnesses, to the criminal action on the [art of Judge Collester in ordering that all deposition materials be destroyed. False financial figures were presented by attorney Karen Haber who also stole large sums of bond money; and substitute trustee Walter Thomas took or misplaced over $200,000 of trust monies, and offered $40,000 to the Petitioner as a bribe from sums unrecorded by the Court. These are criminal matters that must be pursued. They are referred to here because they shed light on the nature of the proceeding even though in this application to the Supreme Court criminal matters are not directly

pursued, but the question of law as it relates to judicial immunity in the alteration, deletion, and transformation of sworn testimony after jurisdiction has concluded.

Indeed, many other matters of a criminal nature are not being pursued here: the alterations made by Judge Rocco D'Ambrosio in order to bring in the accountant for the attorney opening the case as accountant for the Court, the alterations and substitutions of relevant colloquy made by Judge Rocco D'Ambrosio; the alterations made to cover up the fact that the 5-Day Rule for the service of papers in the Courtroom was ignored, and the criminal action in ignoring the orders for the certification of the accountant who first stated that he knew nothing about municipal bonds that constituted the trust, then falsely inventoried the bonds making a half million dollar "mistake", then lied in writing to the Court as to the ownership of the safety deposit box in which the bonds were housed, refused to turn up to give testimony as clearly announced in Book 2 of the transcripts related to this case, and finally, secretly provided falsified information to Karen Haber for which she took responsibility before Judge Collester involving hundreds of thousands of dollars of error. Many other irregular matters also took place in this case, including the robbery of the safety deposit box by James Giordano and the manager of the PNC Bank in Rockaway, New Jersey.

On September 20, 1993, Judge Donald Collester substituted without any additional hearings a trustee for the trustee that had been named by Judge D'Ambrosio. This matter was appealed by the Petitioner to the Appellate Court.

The Appellate Court in contrast to Collester's decision declared that the Petitioner had a legitimate trust and complimented Thomas Coffey on the excellent financial records that were made available to the Court. The Appellate Court in its decision on this matter stated that the entire matter was remanded to the trial court for further

action "consistent with their opinion," yet nothing was ever done to modify the decisions of Judge Collester based on an opinion that there was no trust at all and excluding all the financial data approved by the Internal Revenue Service over a 14 year period.

The decision of the Appellate Court was appealed to the Supreme Court of New Jersey which rejected the appeal. This matter was then taken to the Federal Court in Newark, New Jersey, under Judge Walls in the above-referenced decision. Meanwhile, Judge Conway succeeded Judge Penza and held secret hearings for Walter Thomas to open the safety deposit box at the Midlantic, now the PNC Bank. Before this was done two witnesses observed James Giordano entering the PNC Bank after hours and going to the vault desk with the bank manager for the examination of the contents of the box from which it is believed three diamonds, corporation documents, and certain federal bonds were removed. James Giordano had apparently reported that he had lost the key and Walter Thomas on October 30, 1996, had the box drilled in the presence of the manager and removed the contents. The financial report that Walter Thomas gave to Judge Reginald Stanton on May 16, 1997, showed that he had robbed $135,000 from the bonds themselves constituting the municipal part of the trust and that he misallocated at least $75,000. Thomas Coffey has received reports from the United States Government Bond Office in Chicago that some of the bonds may have been fraudulently cashed. Federal investigators looking into this matter at the PNC Bank were given false information. The manager made false statements with reference to the disposition of contents other than those of the trust saying erroneously that she had informed the owners of the box about the disposition of their contents, stating that they were placed in a separate box which was untrue, and making additional numerous false statements to federal investigators from the Office of the Controller of the Currency and from elsewhere. To this date, the trust has not been disbursed. This case is now appealed to the United States

Supreme Court with a request for a Declaratory Judgment not with reference to the criminal activities that took place, but with reference to the deletion, alteration, and transformation of sworn testimony by Collester after his jurisdiction in FM-27853-87 had been concluded and when he no longer enjoyed the privilege of judicial immunity in this matter.

B. Procedural History

Elements of the Procedural History are involved in the prior section, but a special note should be made of certain events which interrupted and corrupted the judicial proceeding.

1. James Giordano in April of 1992 made an inventory of the trust in the safety deposit box of the Midlantic, now PNC Bank. When Thomas Coffey pointed out that his inventory was mistaken by at least a half a million dollars twice and that Giordano had lied to the Court in writing, James Giordano refused to continue as an accountant for the Court review, and thus the Court operated without a certified public accountant or any person substituting with equivalent talent and experience in accounting affairs. One result of this is that Judge Collester never had an inventory of what constituted the trust and did not know what he was making a decision about. See A-15 through A-18.

2. In addition, attorney Thomas Carles of Parsippany, New Jersey, who had in 1983 validated the existence of the trust for the Court was subpoenaed to appear in June of 1993. He had worked for Thomas Coffey for 20 plus years and yet he was ordered to state that he did not know Coffey and that he had no information with respect to the trust. After the hearing of August 4, 1993, Thomas Carles explained to the Petitioner that he had been ordered by Collester to perjure himself and asked the Petitioner for additional work.

3. Brian Fruehling the attorney for Thomas Coffey in the Court was ordered to destroy the deposition materials for which Coffey was charged, and, therefore, a judicial hearing was held without deposition materials, with no documentation or files to support any of the financial decisions made. Thus it was impossible for Collester to know what he was deciding about in his decision.

4. The attorneys that succeeded Fruehling, Gregory Farmer and Robert Simels both stated that their careers would be jeopardized if they actually told any Court what had happened in the Court. Farmer reported that he could never win another case in the State of New Jersey or elsewhere if he mentioned any deletions such as the deletion discovered by Ferdinand Mojica of the Appellate Court of the State of New Jersey. Simels stated after he had appeared before Judge Walls that it was easier to convict and impeach the President of the United States than it was to convict a judge of any criminal action and that, therefore, he did not have any hope for the case.

REASONS FOR GRANTING THE WRIT

I.

Certiorari Should Be Granted To Resolve An Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Honorable Court.

Professors throughout the Nation such as Professor Dutile of Notre Dame University have found no specific decision in constitutional law where it has been decided that a judge can or cannot alter, delete, and transform sworn testimony, and, therefore, the judgment of the Supreme Court is requested on this matter. On the one hand, there are those such as Jed Milstein and attorney Zweig of the Attorney General's Office in New Jersey together with Ms. Mansier, the attorney for Governor Whitman, who say that every judge has absolute immunity and cannot be convicted for anything he does in a Court case. This, of course, is obviously

untrue. If a judge took the evidence in a criminal or financial case and destroyed 50 percent of it he would be held accountable for his action. If further, he absolutely refused to respect the property or the freedom of an individual citizen he would also be in error. But the matter has not been clearly decided and judges are understandably reluctant to concede the right that they have taken to themselves in certain places to "cleanse" or to alter tapes that represent things said during a judicial proceeding. Does this mean that they have then the right to change evidence submitted to the Court?

It is time for us to comment on what is evidence in this case. If in the instant case Judge Collester enjoyed the full privileges of immunity for the sexual questions which he addressed to Cathleen Coffey such as how many times she had intercourse with her father, why then did Judge Collester erase these questions which can be played and substantiated for the Supreme Court from tapes available through me. If Judge Collester had the right to ignore tens of thousands of dollars that were sworn to in testimony given under oath by Jennifer Coffey on June 15, 1993, and he was absolutely immune, then why did he find it necessary to remove it? If he enjoyed judicial immunity, he could have ignored it instead of removing it. That was the protection that the Rule of Judicial Immunity extended to Collester. But Collester excluded himself from the protection of judicial immunity by first deleting the material incorrectly and then months after he was removed from the case recovering the improperly deleted tapes, removing the evidence of a criminal deletion, leaving a six second pause in contradiction of the testimony in written form given by Ferdinand Mojica that there was a line of questioning begun by Brian Fruehling, attorney for the defendant. Collester would have perhaps escaped liability in this matter if he had correctly deleted the material at the time he was still the judge in the case, but many months later when he had been replaced by Penza, and Penza had in fact even resigned from the Superior Court and the

matter was placed in the hands of another judge, Collester recovered the tapes, changed them, and refiled the changed tapes as evidence of what took place under his jurisdiction when it in fact took place many months after his jurisdiction ceased. When jurisdiction ceases, immunity ceases, and therefore Collester was stepping outside the role of a judicial act to perform a criminal act for which he was in fact liable. If he had immunity for what he did, why did he try to cover it up? Because inherently he was asserting that citizens have a right against the judiciary. They have a right to have the evidence of truth presented to the Court. They have the right to at least ask a judge even if he should be immune in making a bad decision, not to exclude testimony that is relevant and not to bring in abusive and intimidating materials that are intrusive. This Judge Collester acknowledged in his various efforts, some of which failed, to erase the tapes.

Throughout the State of New Jersey hundreds of tapes are missing in the Trenton area, dozens are missing in the Somerville area. Scores of attorneys I have interviewed complain about the removal of relevant materials from cases. Corinne Mullen who clerked for Justice Clifford of the Supreme Court of New Jersey stated that every day he "cleansed" his tapes. If as in the instant case the cleansing involved highly relevant materials or showed an abusive attitude on the part of the judge toward a witness or toward a defendant with respect to the questions asked about intercourse between a father and a daughter, the judge should have either recused himself because of his prejudice or excluded this type of material from involvement in a financial and trust lawsuit. That is, just as our forefathers have achieved an admirable balance in our government between the judicial, legislative, and the administrative branches of our government, so in the judicial process a judge would be acting in a disorderly way who would hold a hearing in a distant place to which a defendant or plaintiff could not come, a judge who would hold hearings at various

times that were inconvenient to the participants, a judge who would in similar manner introduce materials foreign to the question being discussed, or many months after he has been removed from the case, to delete highly relevant evidence of his prejudiced attitude and of his criminal action in the case in order to cover up his felonious intrusion into the discourse taking place in the Courtroom. This is the very thing that Jefferson complained about in the Declaration of Independence. There is no doubt that a judge has immunity and is entitled as a human being to make an error with respect to his decision on difficult matters. But if the judge shows a highly prejudiced attitude by introducing elements that are foreign to the case, abusive to the defendants, abusive to the plaintiffs, and if there is about the room the troublesome smell of whiskey during the entire proceeding, if the entire proceeding is pockmarked by criminal behavior on the part of accountants, lawyers, the introduction of an accountant through deletion of the tapes, if in fact there is robbery of the safety deposit box by the accountant taking the inventory, and if all of these criminal things are working hand in glove with a prejudiced judge who takes upon himself something that is not protected by immunity or connected with his being right or wrong in a decision, but with his effort many months after he has been removed from the case to contaminate the evidence itself that was part of the decision: in that case the decision should, I ask this Honorable Body, be overturned, should it not?

Should not this Honorable Body give direction and order to the keeping of records, to the keeping of evidence in any judicial proceeding, to the maintenance of the rights of citizens as judgments are made regarding evidence just as much as it should protect the rights of judges against needless barrage and constant questioning after a decision has been made. If judges did not know these things, most Honorable Judges, why would tapes disappear? Why are deletions made? Why are substitutions made by D'Ambrosio in the back

room to cover up the use of the accountant for the attorney opening the case? Why did he try to make erasures to cover up his violation of the 5-Day Rule for the submission and service of papers? If Collester had immunity to ask any question he wanted, why did he have to erase the sex questions where he asked my daughter if she had intercourse with me? And, if this is not a highly relevant matter to a trust and finance lawsuit, why did Judge Collester remove tens of thousands of dollars of testimonies given under oath in this particular case? Is the same thing happening throughout the State of New Jersey? I could show you, Most Honorable Judges, the documentation I have from over 54 cases that people have written me about. I am not an attorney, and I am not offering people judgments, nor can I introduce them into this case in a relevant manner, except that we are confronted with a serious social problem where judges like Collester arrogate to themselves power beyond what appertains to the already respected, necessary, and highly valued powers of a judge in our society.

It is by now obvious to this Court that the possession of instrumentation for the alteration of sworn testimony constitutes a serious threat to liberty of individual citizens in our society. I am not speaking on behalf of the hundreds of thousands of dollars misallocated, robbed, and never recorded in this particular case. I am talking about the sacred right that was won on the battlefield by George Washington, written in the books by Supreme Court Justice Marshall, by Thomas Jefferson, Benjamin Franklin, and the founders of this Republic when they spoke about the rights of citizens, and I respectfully request that you address the question for our time of whether a judge has the right under the umbrella of immunity to delete, alter, and transform highly relevant sworn testimony in substantial matters that affect the outcome of a case, and affected it many months after he is no longer the judge in the case, but has been replaced by other judges, and whether he can do so without robbing individual citizens of their

rights to an exact record or engaging in activity that does not appertain to the judicial process in itself. Please consider, Most Honorable Judges, the implications in the following cases:

The Supreme Court decided in Forrester v. White, 484 U.S. 219, 108 S.Ct. 538, 98 LE2d 555 (1988), that a judge's administrative as opposed to judicial acts are not protected by judicial immunity, that is, Collester's deletion of the material many months after his removal from the case was not a judicial act in any sense of the term. In the instant case a judge making employment decisions was not considered to be acting judicially, and Collester deleting evidence of the deletion many months after his removal from the case was not acting judicially because any statement or action of his months after his decision and his actual replacement by Penza and other judges would have been superfluous. Furthermore, a judge loses the protection of judicial immunity when he acts in a way that is beyond the role of a neutral arbitrator of disputes. The instant case was no longer pending before Judge Collester and he had nothing further to contribute to the instant case yet his actions went beyond the role of a judge toward the cleansing or alteration of a tape over which he no longer had judicial authority since it had been filed and removed from his jurisdiction. In Harper v. Merckle, 638 F.2d 848 (5th Cir. Fla. 1981) cert. den. 454 U.S. 816 (1981), the judge was not protected by judicial immunity since the actions did not center around questions pending before the judge in his judicial capacity. In Brewer v. Blackwell, 692 F.2d 387 (5th Cir. La. 1982), the judge was not considered to enjoy judicial immunity when his actions were seen to be motivated solely by a desire to vindicate his personal interests which is precisely what Collester sought to do many months after his judicial action in FM-27853-87 had entirely ceased. The actions of Judge Collester as in this instant case fell well outside the scope of judicial immunity since the judge acted out of personal motivation to cover up for his inadequacies

long after he was removed from the case and simply to vindicate his personal record and private motivations. The Supreme Court has held that judges enjoy immunity in a manner that must be broadly conceived, that acts done by a judge in the clear absence of all jurisdiction over the subject matter are not protected by judicial immunity according to the ruling of Cleavinger v. Saxner, 474 U.S. 193, 106 S.Ct. 496, 88 L.E.2d 507 (1985); Stump v. Sparkman, 435 US 349, S5 L.E.2d 331, 98 S.Ct. 1099 (1978); Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 18 L.E.2d 288 (1967); Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.E.2d 396 (1982); Bradley v. Fisher, 80 U.S. 335, 20 L.E.646 (1872). Indeed the Supreme Court has clearly illustrated the distinction between the judge acting with and without judicial immunity. A probate judge would be acting without immunity if he made an attempt to try a criminal case. Similarly, Collester was acting without judicial immunity when many months after he was removed from the case he attempted on his own and without any jurisdiction in the matter to reenter it and to alter the evidence of the hearing. No matter what Collester's decision in April 1994 might be, it would not have been relevant to the case. Neither was he justified in reentering the case on his own to alter evidence, to recover the tapes, to refile new tapes reconstituted in accordance with his private desires as official records of the hearings that took place. There is no court rule or Statute in the United States of America that would permit any judge months after he has been removed from a case to take the actions that Collester took.

In Stump v. Sparkman, supra, the judge who acted in error still enjoyed the rights of immunity despite his failure to comply with elementary principles of procedural due process. But in Bradley v. Fisher, supra, a judge was found to be subject to liability damages when he acted in clear absence of all jurisdiction. This is precisely what Collester did in the case before us. Even though he worked with a set of erroneous numbers

unsubstantiated by the figures approved by the Internal Revenue Service over a 14 year period and presented to him by my certified public accountant, even though Collester was in error in using a false set of figures he still enjoyed immunity, but when he tried to act five months after he was removed from the case and months after another judge had replaced him, he was acting in clear absence of all jurisdictional authority.

Let us define what is meant by a judicial act of a judge. (1) The nature of the act itself, whether it is a function normally performed by a judge; and (2) the expectation of the parties whether they dealt with the judge in the judicial capacity. In Stump v. Sparkman, supra, the judge ordered a sterilization and was in error, but this was a judicial act. It was not an act unlike other actions of judges whereas Collester's act was essentially different from the action of all judges who do not return to appropriate to themselves jurisdiction many months after they have been removed from a case or belie the expectations of those awaiting a judicial decision in that the judge many months after he is no longer connected with the case alters the data of the case one way or the other. It is not that the parties may disagree with the judge or find fault with his conclusion, but whether he has acted in a judicial role throughout the actual making and execution of the decision -- a thing that Collester did not do by returning months after his work on the case was concluded to alter the essential data of the case. Judges should rightly enjoy judicial independence, but the rights of citizens are also to be protected in that judges no longer connected with a case may not return without liability to alter, delete, transform, and to change the data of the actual case on which the rights of appeal and the rights of review are based. While immunity is intended to protect judges against the criticism of those disappointed by the outcome of a case, what would the outcome of any case be and what would be the position of the Supreme Court of the United States if judges

throughout the United States could return months after their cases are concluded to alter, to delete, and to change the evidence given under sworn oath. Immunity should exist absolutely inside the judicial function, but when that function is concluded, when as in the case of Collester his decision has been rendered and the tapes filed it is not permissible for him without liability to damages to take the tapes and make further alterations in them. A judge will enjoy absolute immunity even if he acts maliciously, corruptly or in error, even if his actions are marked by serious procedural errors, even if a judge acts in conspiracy with another person to predetermine the outcome of a case, but if a judge returns months after his removal from the case and arrogates to himself judicial authority over that which has been removed from him, he enjoys no judicial immunity and is subject to liability damage as the Supreme Court has itself determined. Was the act of Collester discovered by Mojica an act that every judge performs in the normal part of every judicial function? Was the act an act done in a Courtroom or in the judge's chamber during the time in which he was the judge in the particular matter? Did the act of Collester occur during a time of judicial conflict within Collester? These are not the assertions of the Petitioner in this case. The assertion of the Petitioner is that a man who had no judicial authority arrogated to himself judicial authority and altered evidence of a case from which he had himself been removed. The fact is that Collester was no longer possessed of the role of a neutral arbiter of a dispute.

The request of the Petitioner is that the deletion, alteration, and transformation of sworn testimony by Judge Collester ought to be viewed in relationship to the false inventory, to the robbery of the safety deposit box by James Giordano, to the funds missing from the trust which on May 16, 1997, before witnesses and according to the tapes, Walter Thomas was asked to supply a record of and challenged to risk his whole case on the basis that there

were no funds missing -- a challenge which he refused to accept even though $22,000 of "unrecorded" sums were later offered to Coffey. And the Petitioner will risk his entire case here and now on his ability to state for the Supreme Court where the missing $22,000 is or else will gracefully accept the refusal of the Supreme Court even to consider this application. Similarly, in the Court before Judge Reginald Stanton on the same day, May 16, 1997, Walter Thomas offered Thomas Coffey in writing $18,000 even though he could not account for hundreds of thousands of dollars of missing funds and misallocated funds in the same trust. This is a case that was never inventoried properly, was never understood properly, with criminal elements rushing in to it, and that reveals a very serious flaw that appertains to many cases throughout New Jersey.

Just consider for a second that when tapes are filed the clerk removes the break slots preventing any accidental erasure of materials from that point in time on. Nevertheless, Judge Collester was able to recover the tapes, make the deliberate criminal act of removing the evidence that Ferdinand Mojica of the Recording Services Department of the Appellate Court of the State of New Jersey found for deletion, and refiled the tapes as if they represented what truly took place in the Court. This is a mockery of justice. This is a violation of citizens' rights. This is the arrogation to himself of *ipse dixitism*, dictatorial powers that are not even arrogated to a person by the worst dictatorships in the history of the world. For which dictator has ever dared to say what truth is. Even Pontius Pilate, when he asked: "What is truth?" turned his back and walked away before he got the answer. He did not try to say what truth is and no man would dare to try to say what it is in the manner that Judge Collester did in FM-27853-87, and months after his judicial function ceased. For that is a corruption of the judicial process and the Supreme Court is respectfully asked to grant a writ for the rehearing of the case before a jury in our Land

according to the rights granted under the Fourteenth Amendment by the Constitution of the United States of America.

The misuse of the taping led to the whole train of abuses that followed -- the false inventory after D'Ambrosio introduced Giordano by manipulation of the tapes, the robbing of the safety box, the misrepresentation of the ownership of the box, the refusal of Giordano to come forward and testify as to what he had put in writing out of the fear that quite naturally gripped his heart when he was caught lying by more than a half a million dollars about the value of the trust, the return of Giordano to rob the contents of the box with the bank manager who lied to federal investigators about what she had done, the continued abuses by Walter Thomas in declaring himself to be my attorney under a signed oath, his refusal to correct that, his return to the bank before the same bank manager who lied again to federal investigators regarding Walter Thomas' appearances and the details connected with it. I ask your August Body to hold me responsible for every statement I make and if you find one inaccuracy in any of the above statements I will gladly concede my entire case and pay the bills for everybody connected with it.

Certiorari should be granted by this Honorable Court because of the risks attendant on the developing science of electronics which if misused by only a few could lead to intolerable injustice and be subversive of American life as we know it. The record made on tape in analog form through the use of the Lanier tape recorder is subject as I have found to digitalization by passing the tape through a computer. Background noises may be removed and new background noises inserted, words can be deleted, words can be moved from one section of the tape to another, orders may be reversed, statements may be changed, sums of money can be altered -- and all of this subject to discovery only by someone who possess at the present time a set of tools that can interpret the tape to greater than 1/300th of a second. This has all

come about in broadcast fields, in movies, and in videos by the use of an advanced technology to achieve a greater product. And the misuse of these advances with respect to judicial tapes is a threat to American democracy.

Reflect, if you will, Most Honorable Judges, on the misuse made of the developing science of eugenics by Adolph Hitler. Millions were killed, the continent of Europe devastated, great treasures of mankind destroyed, young men from all over the world stained the earth with their blood in the sands of Africa, on the beaches of Omaha and gave their lives in the skies over Berlin.

II.

Certiorari Should Be Granted To Help Assert That The United States Will Remain A Free Nation Where The Application Of Laws Shall Be Uniformly Equal.

Who has given to any man the right to determine in another person's sworn statements what shall remain and what shall be erased? Opinions may be offered, but can a self-proclaimed publicly convicted, twice hospitalized, twice rehabed alcoholic declare on his own what shall remain in sworn testimony? And does he have the right to alter this after a proceeding is closed? At least seven months after his work in the proceeding is over? Can he tell an attorney who worked for me for more than 20 years to state in writing that he does not know me? Can he tell a man who charged me for deposition materials to destroy all deposition materials connected with the case because it is he alone who will decide what is true? Can the same man appoint an attorney who goes immediately to a bank and declares himself under a signed oath to be my attorney and to my knowledge has never yet withdrawn his signed false oath? Can this man break into a safety deposit box of a party not a participant in the lawsuit? All of this came from the alteration of sworn testimony and within moments $135,000 of a trust is missing. Can a judge in a financial case direct sexual

questions of a cannibalistic order to my daughter only to erase them and escape judgment and punishment for such behavior while he at the same time continues on with his plan to rob a trust? Can Collester say that what is up is down? Can he tell you if it's hot that it's cold? And does that make it such? If it's wet and he declares it to be dry, is it in fact dry? When he says that your hand is your foot, does that make it so? Here is a man that forced himself into the place of God in his arrogance and declares things that are false to be true and things that were true he made out to be false and he has the support of the Governor of the State of New Jersey who says through her attorney that "she does not wish to be involved." And he has the support of Judge Reginald Stanton the manager of the Morristown Courthouse who will neither investigate nor prosecute these proven alterations of tape recorded testimonies but steadfastly closes his ears and steadfastly closes his heart to the alarms that are set up that American society insofar as it's connected with the Morristown Courthouse is in a state of disarray and discontent and dissolution.

You may say this man speaks this way to protect his control of the money in the trust he has for his daughters, but I ask you who paid for that trust? Who established the trust without ever making a charge of a dime for its bank deposits and taxes year by year? Who agreed under oath in 1988 that I would administer the trust until my death, only to come back three years later and to demand the opposite in a case besot not only with inebriates but with crime? Who is it who stole $135,000, was it I or was it Walter Thomas? Who charged $20,000 for administration of the trust without ever distributing a single nickel of it? Was it I or was it Walter Thomas? And, I, a nearly 70 year old man who is blind, who has more money than I can bother to spend, cannot find an attorney who has the courage to say the things that I say to you without fear of retribution in the State of New Jersey, who cannot speak of a judge like Collester who altered tapes in a wholesale way without fear

of retribution from every Court in the State, who is afraid to say that Collester engaged in the crimes I will prove by true tapes, witnesses, and experts who will establish which tapes are true and which are false, and in addition bring forth the signed testimony of Ferdinand Mojica of the Recording Services Department of the Appellate Court of the State of New Jersey who declared without any reservation that deletions were made in the testimony of June 15, 1993, when Collester directed abusive and cannibalistic sex questions to my daughter and removed tens of thousands of dollars worth of financial testimony from the tapes. Who will do these things? Find such a man for me and I will gladly pay him, but otherwise I myself will speak for my country, I will speak for my people, and I will come before you as Moses came before the Pharaoh and say boldly: "release my people from these electronic bandits like Collester and D'Ambrosio, release my people in the name of God and the Living Christ, release them and let them go!"

III.

Certiorari Should Be Granted By This Honorable Court to Guarantee An Important Aspect Of Daily American Life: The Enjoyment Of Freedom And Happiness Untroubled By Lawyers Such As Sheldon Simon and Karen Haber Who Are Determined To Rob, To Cheat, And To Steal In Electronic Thievery.

On May 16, 1997, Karen Haber and Walter Thomas sat before Judge Reginald Stanton with papers in their hands relative to the disbursement of the Coffey trust. The papers showed that Karen Haber had stolen huge sums of bond money and large portions of interest. She had already stolen my daughter's car. She had already in some state of idiocy had orders signed (but falsely witnessed) by the Court for the seizure of the property of her own clients. This she was able to get out of by blackmailing Judge Gannon over his sexual adventures. She and Thomas sat there with a record of $135,000 stolen from the trust, $75,000.00 misallocated,

$221,000 worth of Federal bonds stolen along with three diamonds and corporation papers from a bank safety deposit box they opened illegally. I could go on with a record of plunder, robbery, cheating, stealing and brigandage on the part of these two thieves who followed swiftly in the wake of Collester's illegal alteration of tapes seven months after he was no longer a judge in the case.

And what have my daughter got out of these thieves today but heartache, repetitive lawsuits, loss of income, loss of $240,000 that by law I could have distributed to them according to the tax code and what is their result in terms of the trust -- not one dime has been distributed. And I have disinherited them from millions of dollars for hanging out with crooks.

Judge Reginald Stanton never lifted a finger to interrupt even when alteration, deletion, and transformation of sworn testimony on tape is proven to him. Nor does the Governor of New Jersey interfere in this, but sends out her lawyer, Mansier, to state that "she does not wish to be involved," despite her oath to God Almighty to protect persons, property, and the institutions of freedom in the State of New Jersey.

This Honorable Court is asked to stop this manifest robbery and to make a declaratory ruling that it is illegal and unlawful for a judge to alter, to delete, and to transform sworn testimony in the Courts of this Land when he is acting (as Collester was) outside his judicial role.

A famous French philosopher Count De Maistre has said in criticism of the American way of life, "I have never yet met man. I have met Germans. I have met Italians. I have met Englishmen, but I have never yet encountered "man"." I disagree with this philosopher. I have met man! I have met him in the streets of the United States of America. We are not 250 million. We are not 10,000. We are not even two. All Americans are but one and of one

voice in protest against those who would delete, alter, and transform our sworn testimony to rob, to cheat, and to steal and to corrupt the sources of American life and liberty.

The Bible tells of a certain man who went down from Jerusalem to Jericho and who was set upon by thieves who beat him, who robbed him, and who left him half dead. Only through the kindness of a stranger was this man taken to an inn, his wounds bound up with oil and wine. And he was restored to life and health. Most Honorable Judges, I am that man. I am the man who set out to give a trust to my daughters, and I was set upon by electronic thieves who beat me by causing me to watch a drunken judge address sex questions of a cannibalistic and savage sort to my daughter before my face. It affected me, causing me to be dizzy and to have a mild paralysis which the doctors said was the beginnings of a heart attack and I was taken by ambulance to the local hospital and kept on the emergency table from 10 in the morning till 6 in the afternoon whereafter I was carried to a ward for special care throughout the night. All this happened for the first time in my life right after Collester spoke as he did to my daughters. I am that man, and I have returned from the half dead to declare that the alteration, deletion, and transformation of sworn testimony -- particularly in the case of Collester asking my daughter savage sex questions in a savage way, particularly Judge Collester removing tens of thousands of dollars involved in sworn testimony from the tape when he was no longer judge in the case, particularly with reference to his moving my statements around the tape by digitalization which caused me to appear to say things I never said -- I am the man who returned from the half dead to reproach Judge Collester and to ask of this Honorable Body that his type of behavior be declared illegal, unlawful, and unacceptable in accordance with the Fourteenth Amendment to the Constitution of the United States. I do

not seek vengeance because God has given my heart courage to ask for justice. I ask this Honorable Body to recognize the justice of my cause.

CONCLUSION

In this light I ask this Honorable Body to grant to me a Writ of Certiorari so that the differences between me as Petitioner and those listed in the caption above as Respondents may be settled in a legal manner that is a credit to the American way of life.

Respectfully submitted,

Thomas P. Coffey

Thomas P. Coffey
One Summit Street
Rockaway, NJ 07866
(973) 627-9141

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-5803

THOMAS P. COFFEY,
Appellant

v.

DONALD G. COLLESTER; VICKI MCINTOSH;
WALTER E. THOMAS, JOHN DOE #1

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 96-cv-01654)
District Judge: Honorable William H. Walls

Submitted Under Third Circuit LAR 34.1(a)
October 7, 1997
Before: MANSMANN, ROTH and ROSENN, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by the appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against the appellant.

BY THE COURT,

/s/ Carol Los Mansmann
Circuit Judge

Attest:

/s/ P. Douglas Sisk
P. Douglas Sisk, Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-5803

THOMAS P. COFFEY,
Appellant
v.
DONALD G. COLLESTER; VICKI MCINTOSH;
WALTER E. THOMAS, JOHN DOE #1

Present: SLOVITER, Chief Judge,
BECKER, STAPLETON, MANSMANN, GREENBERG,
SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS,
MCKEE, RENDELL and ROSENN, Circuit Judges.

SUR PETITION FOR REHEARING

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for hearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ Carol Los Mansmann
Circuit Judge

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
LETTER ORDER

Dear Counsel and Litigants:

This matter comes before the Court on motion by Plaintiff's counsel Robert M. Simels to be relieved as counsel. Plaintiff's Motion for Sanctions Pursuant to Fed.R.Civ.P. 12(f) and Defendants' Motion to Dismiss in Lieu of Answer, Motion for Sanctions Pursuant to Fed.R.Civ.P. 11 and Motion to Strike Plaintiff's Reply in Opposition to Defendants' Motion to Dismiss and Plaintiff's Motion for Sanctions Pursuant to Fed.R.Civ.P. 12(f).

BACKGROUND

In 1993, Plaintiff Thomas Coffey lost an action entitled *Coffey v. Coffey* (Docket No. FM-14-27853-87) before the Superior Court Chancery Division-Family Part in Morris County, New Jersey. In that action, Plaintiff's three daughters sought to enforce a judicial decree requiring Plaintiff to maintain a trust. Judge Donald G. Collester, Jr. who presided over the matter, ordered Plaintiff to pay his daughters $115,597.65 in interest on the corpus of the trust and their legal fees. Judge Collester also ordered Plaintiff to pay his daughter Cathleen Coffey $28,000 for withholding money for her college education. With the exception of a change in fee responsibility for the special receiver, the Appellate Division affirmed Judge Collester's decision in all respects. *See Coffey v. Coffey*, 286 N.J.Super. 42, 668 A.2d 76 (App. Div. 1995). On March 7, 1996, the New Jersey Supreme Court denied Plaintiff's petition for certification.

Since losing this action, Plaintiff has sought to avenge his loss and prevent enforcement of Judge Colelster's judgment by initiating a number of actions in various courts and before administrative bodies. On April 15, 1996, Plaintiff, through his attorney Robert M. Simels, filed the Complaint in this action which alleges that Judge Collester and Vicki McIntosh, Judge Collester's courtroom clerk, conspired to deprive the Plaintiff of his civil rights by altering the official

transcript of the proceedings to eliminate testimony, statements by the court, and colloquy that were highly relevant to the merits of the proceedings and statements by the Court that revealed Judge Collester's bias against Plaintiff. Pursuant to 42 U.S.C. § 1983, Plaintiff alleges that Defendants' actions violated his equal protection rights under the Fourteenth Amendment and seeks to enjoin enforcement of Judge Colelster's decision, compensatory damages in the amount of $1,500,000.00 and punitive damages in the amount of $1,500,000. Specifically, Plaintiff contends that Judge Collester and Ms. McIntosh, together with others whose identities are as of yet unknown, intentionally erased, or caused there to be deletions in the tape recording of the proceeding. Plaintiff claims that by these actions, Defendants deprived him of a full and complete record on which to prosecute his appeal.

The Complaint further alleges that Judge Collester displayed lewd conduct towards Plaintiff's daughter Cathleen Coffey by touching his groin while questioning her on the witness stand and inappropriately asking her whether Plaintiff ever sexually or physically abused her. While Plaintiff admits that these actions are not referenced in the transcript, he claims that Judge Collester and Vicki McIntosh deliberately eliminated them. At no point does Plaintiff offer or even speculate as to the possible motivation behind Judge Collester's alleged bias. Also named in the Complaint is Walter E. Thomas, the court-appointed special receiver responsible for distributing all trust assets equally among Plaintiff's daughters. Plaintiff alleges that by taking possession of certain bonds that he maintained in a safety deposit box, Mr. Thomas may cause an over $500,000 loss to Plaintiff.

Plaintiff's counsel, Mr. Simels, has moved to be relieved as counsel because there has allegedly been a complete breakdown in communication with Mr. Coffey. He claims that Mr. Coffey refuses to fund this litigation and has advised him that he does not want Mr. Simels to proceed with the action. In turn, Mr. Coffey has filed an affidavit in support of the motion for sanctions against Mr. Simels and

for the turnover of the funds he has already paid him.

In lieu of an answer, Defendants have moved to dismiss the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and for failure to state a claim upon which relief an be granted pursuant to Rule 12(b)(6). In their motion to dismiss, Defendants argue that even if Plaintiff's charges were true, he is not entitled to any of the relief which he seeks because this Court lacks subject matter jurisdiction to review State court actions. In addition, Defendants note that the U.S. Supreme Court has made clear that judges and judicial employees are immune from suits for damages pertaining to any actions taken during the performance of their duties.

Defendants also seek Rule 11 sanctions against Plaintiff and Mr. Simels for their refusal to withdraw the Complaint. According to Defendants, Plaintiff and his attorney filed this Complaint solely to delay enforcement of Judge Collester's 1993 chancery decision because it lacks evidentiary support and is based on claims not warranted by existing law. Defendants contend that therefore a monetary sanction for attorneys fees for the cost of defending this action and an order further enjoining Plaintiff and his attorney from initiating any further litigation with regard to either the merits or enforcement of the chancery court decision are both appropriate and necessary to deter them from further abuses of process. In response, Mr. Coffey has filed a *pro se* reply and a motion for sanctions against the State of New Jersey, the Attorney General and the Deputy Attorney General handling this matter for fabrication of false evidence. In addition, Mr. Coffey makes numerous other demands, including a demand for the appearance in this action of counsel present at the 1993 chancery court proceeding.

DISCUSSION

This Court finds that it lacks subject matter jurisdiction to consider this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. By seeking to enjoin enforcement of Judge Collester's judgment, Plaintiff essentially has asked this Court to

directly review the final determination of the underlying state chancery action. According to the well-established *Rooker-Feldman* doctrine, federal district courts lack the subject matter jurisdiction to sit in direct review of state court adjudications. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-483 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). This doctrine arises from the interplay of two jurisdictional statutes; 28 U.S.C. §1331, which grants district courts original jurisdiction over civil actions arising under federal law, and 28 U.S.C. §1257, which grants the Supreme Court the right to review "final judgments rendered by the highest court of a state." In *Rooker*, a state court judgment was entered in favor of the defendant and subsequently affirmed in the State Supreme Court. Instead of moving for relief before the United States Supreme Court Rooker commenced a suit in federal district court alleging that the judgment was obtained in violation of his Fourteenth Amendment due process rights. In affirming the district court's dismissal of the action, the United States Supreme Court held that only the Supreme Court, and not the lower federal courts, may review decisions of the highest court of a state. *Id.* At 416. *See also Atlantic coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970).

Underlying the *Rooker-Feldman* doctrine is the principle of comity and respect for the state adjudicatory process. *Guarino v. Larsen*, 11 F.3d 1151, 1157 (2d Cir. 1993). The doctrine also mirrors claim preclusion because it prevents litigants from taking multiple bites from the same apple. *Id.* The Third Circuit has held that in applying the *Rooker-Feldman* doctrine, the court should look to the nature of the relief sought and if the relief sought is injunctive in nature, then the claim is, in effect, seeking a reversal of the state court decision and is therefore barred. *Valenti v. Mitchell*, 962 F.2d 288, 292 (3d Cir. 1992). The *Rooker-Feldman* doctrine bars a losing party in state court "from seeking what in substance would be appellate review of the

state court judgment [in federal district court]." *Johnson v. DeGrandy*, __ U.S. __, 114 S.Ct. 2647, 2654 (1994) (emphasis supplied).

Here, Plaintiff had the opportunity to raise his Fourteenth Amendment claims before the Appellate Division of the Superior Court of New Jersey because he possessed the purportedly tainted transcript when his appellate brief was prepared. Plaintiff either failed to raise these claims before the Appellate Division, or the court determined that they were without merit. Furthermore, the New Jersey Supreme Court denied his petition for certification on March 7, 1996. Permitting Plaintiff to move forward in this action would simply allow him a second bite at the apple with regard to his constitutional claims. Moreover, Plaintiff cannot disguise his attempt to circumvent the order entered in the chancery matter as a new and independent action against Defendants under § 1983. *See, e.g., Homola v. McNamara*, 59 F.3d 647 (7th Cir. 1995).

Accordingly, the Court dismisses the Complaint with prejudice in its entirety and also dismisses all other motions raised by the parties.

CONCLUSION

For the reasons stated, the Court, having considered the papers submitted herein and for good cause shown;

It is on this ___ day of November 1996;

ORDERED that Defendants' Motion to Dismiss is granted;

ORDERED that Plaintiff's Complaint against the Honorable Donald G. Collester, P.J.Cr., Vicki McIntosh and Walter Thomas, Esq., is dismissed in its entirety for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Further ORDERED that all other motions made by the parties are dismissed.

/s/ William H. Walls
William H. Walls, U.S.D.J.

NEW JERSEY APPELLATE COURT

May 25, 1994

Thomas P. Coffey
One Summit Street
Rockaway, NJ 07866

Re: Transcripts in the Matter of
Coffey v. Coffey
FM-27853-87

Dear Mr. Coffey:

Pursuant to your request, the transcripts forwarded to this office were compared against the court tapes. Reporting Services Senior Field Representative Ferdinand Mojica completed the review process. Mr. Mojica's report (enclosed) states that the transcription matches what was recorded on the tapes. I discussed the matter with Mr. Mojica and he did not notice any breaks in the tape where portions could have been erased or edited.

I am returning the transcripts to you as requested. Please contact this office if we can be of further assistance in this matter.

Very truly yours,

/s/ Jeffrey A. Newman

Jeffrey A. Newman
Chief, Reporting Services

Excerpts from the April 21, 1994 report of Ferdinand Mojica

*Page 82: There were deletion of questioning by Mr. Brian Fruehling attorney for the defendant.

* in the tape new deletions were made after Mojica's report and there is now a 6 second pause in the place where Mojica reported a deletion. Thus, changes were made seven months after Collester's decision of September 20, 1993, after which he left the case. Mr. Newman's letter did not take account of the deletion Mr. Mojica reported.

Letter to the Clerk of the Appellate Court from Thomas P. Coffey

Mr. Newman provided me with a report from a Mr. Mojica in which Mr. Mojica dealt with a deletion he recognized in his analysis of the tapes . . . . I have certain questions on which I would appreciate a response from the Appellate Court related to the deletion described by Mr. Mojica.

1. Did Mr. Mojica recognize the deletion from discovery of a machine controlled function or otherwise?
2. If otherwise, how did Mr. Mojica distinguish the deletion from other pauses. If not otherwise, did he use an oscilloscope?
3. Did Mr. Mojica or someone else report the deletion to the authorities as an unusual occurrence, or make any effort to find out who made the deletion, insofar as any deletion is illegal?
4. Does the record of Mr. Mojica indicate how long the deletion was? Was the deletion made after the breakslots were removed?
5. If it was truly a deletion that Mr. Mojica recognized, then how would he know what it was that was deleted? Did he consult with someone, or is there a record of who had access to the tapes, and Mr. Mojica was therefore able to conclude something?
6. Would Mr. Mojica deny that Judge Collester made statements that do not appear in the transcript or tape at this point?
7. Did Mr. Mojica take any testimony from anyone related to the deletion Or is his response on this criminal act purely casual and accepting?
8. Would Mr. Mojica or the Appellate Court deny that certain changes were made in the original tape following his report?
9. Did Mr. Mojica notice any other machine controlled function in any of the other apes or any deletion as distinct from pauses?
10. In the event that no one reported this deletion to authorities, is it customary in the Appellate Court for criminal action to go unreported?
11. Is there any back-up file indicating the length of time during which Mr. Mojica's study

and report was done? Would this study and report be regarded by the Appellate Court as professional?
12. Is there any special reason why Mr. Newman did not want any input from professionals I consulted?
13. Has Mr. Mojica ever been employed by the Appellate Court to make analysis of tapes prior to the date of his work on these tapes?
14. If the Appellate Court knew that Judge Collester was taking the original tape of a trial or hearing and running it through a computer to subtract or add whatever he wants to "reconstitute" a new "original" tape, would it take action to stop this violation of basic constitutional rights and to halt whatever nefarious purpose Collester had in mind? Would the Appellate Court not be lacking in moral and intellectual integrity to stop such a judge, would it not be spineless to allow such unbridled audacity to control the process of justice at the Superior Court level?

. . . I go into all this because I am today requesting the Appellate Court to join with me in asking the FBI to enter this case to evaluate the deprivation of my civil rights and the coverup of crimes in the alteration of tapes of a Superior Court hearing -- alterations never examined by the Morris County Prosecutor after demands were made, and additional crimes associated with alteration of the tapes.

No response ever received.

June 14, 1994

John A. Tonelli
Supreme Court of New Jersey
Advisory Committee on Judicial Conduct
CN-037
Trenton, NJ 08625

Dear Mr. Tonelli,

Re: ACJC 94-106

I have received your letter of June 6th regarding the above matter, and previously the report of Jeffrey Newman concerned with study of the tapes on the part of the Reporting Services. By way of contradiction to what you and Mr. Newman say, Page 2 of Mr. Mojica's report states that there was a deletion he discovered on page 82 of the transcript. I happen to know that this deletion involves material spoken by Mr. Fruehling, my daughter Jennifer Coffey and Judge Collester. If as is normal in the filing of tapes, the breakout slots were removed, then a deliberate, illegal and criminal act would have been performed in order to delete this material and records should exist to show who had access to the tapes to do this criminal act. I call to your attention that two professional analyses of the tapes have thus far shown a significant divergence in reporting time and enumeration, with the exception of the tape of Judge D'Ambrosio's hearing of December 18, 1991, where the ending of the hearing is not recorded on the tape provided to me. This ending must still be analyzed by the companies and by a federal agency. Since I have only had the tapes since the last week of May, great progress has been made, and I believe you should keep your files open on this matter so that you would not be accused of protecting criminals either in your forum or in the public forum.

/s/ Thomas P. Coffey
No response received.

VIA CERTIFIED MAIL-RRR & REGULAR MAIL
Thomas P. Coffey
One summit Street
Rockaway, NJ 07866

Re: Coffey v. Coffey

Dear Mr. Coffey:

The substitute trustee's motion for the approval of the accounting, presently scheduled for May 16, 1997, has been rescheduled and will be heard by Judge Stanton at 9:00 AM on Thursday, May 15, 1997, in the Morris County Court House. Kindly mark your calendar accordingly.

Very truly yours,

STERN, LAVINTHAL, NORGAARD & DALY

/s/ Walter E. Thomas, Jr.

WET/rp
cc: Honorable Reginald Stanton, A.J.S.C.
Daniel J. Baurkot, Esq.
Karin Duchin Haber, Esq.
Sheldon Simon, Esq.

Note: as a result of the disappearance of more than $200,000 which Mr. Thomas could not account for in the Courtroom, nothing of the trust has been distributed except for what has been stolen by Mr. Giordano and Mr. Thomas.

Excepts from the hearing of Judge Penza of the Superior Court, State of New Jersey, January 28, 1994. [Questions supplied for clarity.]

Q: Was there a trust?
Mr. Farmer: Judge, I think I'm entitled to a stay both legally, logically and -- logically. I mean, first of all, there was something that was just mentioned here by Ms. Haber that somewhat surprises me, and I don't know how that will play out. If you think it's true, she got up and she said there's no trust here.

[It should be noted that the Appellate Court of the State of New Jersey made a decision mentioned in the brief that what Mr. Coffey had was a trust, but no actions were taken "consistent" with the Appellate Court's decision].

Q: Who stole the $5,000.00 of bond money?
Mr. Fruehling: Sir, if I might briefly, I think the other alternative would be to put up a bond for the overdue attorneys fees.
The Court (Penza): I have no problem with that but that would have to be a bond pending because you don't have an order in place.
Mr. Fruehling: That's correct.
The Court (Penza): You don't have a judgment in place because of the nature of the situation I would request that a bond be posted for Mr. Fruehling.

[A $5,000 bond was posted for Mr. Fruehling's fee. No order was ever served on Thomas Coffey. The $5,000 bond posted has disappeared from the Clerk's hands and was apparently taken by Mrs. Haber.]

Q: What was the trust?
The Court: Nobody knows what it's worth. We don't know the value of it (i.e., the trust).

[In other words, nobody knew the value, nobody knew what it meant.]

Mr. Farmer: . . . I don't even know what is being turned over.

[No one ever knew what the trust was that Collester decided about.]

Q: What if the safety box is empty?
Mr. Thomas: We are talking based upon the assumption and the assumption is that the bonds are in the safety deposit box.
The Court: True.
Mr. Thomas: Now the only one who saw that in the safety deposit box were the two people, Mr. Giordano.
The Court: Yes.
Mr. Thomas: And Mr. Coffey.
The Court: Suppose they're not there.
Mr. Thomas: Well, if I can continue if I could I'll make my point. Mr. Coffey in the papers he's filed in an unrelated action has raised a question as to the inventory that was taken at the time when he and Mr. Giordano put them in the safety deposit box and I think he referred to them as an inaccurate inventory. *The first thing that I propose to do when I get access to that box in the presence of Mr. Giordano is to prepare another inventory.*
The Court: Absolutely.
[Mr. Thomas did not comply with this. Mr. Giordano had already stolen 3 diamonds, corporation papers, and $221,000 worth of federal bonds, and never came back].
Mr. Thomas: *If* there's anything in the box.
The Court: True.
Mr. Thomas: And I'm going to report that to the Court and to counsel of record.
The Court: Fine.
Mr. Thomas: Exactly what's there.
The Court: Good.
Mr. Thomas: And I'd like, I'd like, as a matter of fact, I'd like to be ordered to do that.
The Court: Yeah.
Mr. Thomas: So there.
The Court: I think that Mr. Thomas isn't any question.
Mr. Thomas: Then we'll know exactly what is in there we're distributing.
[It is, therefore, clear that nobody knew what they were distributing. Nobody knew what was in the box. Mr. Giordano had not only falsely

inventoried but had stolen almost half of what was in the box and an inventory was to be taken after the Judge's decision.]

Q: Who Should Be There When Thomas Opens the Box?

Mr. Farmer: Judge, just one thing with respect to, why don't we show with respect to when Mr. Thomas goes and the inventory since we have a track record that there was some sort of disagreement in the past, can I be there and can my client be there?
The Court: Your client, I don't want there.
Mr. Farmer: Alright, can I be there?
The Court: I don't mind if you're there.
Mr. Farmer: Fine.
The Court: Unless you have an objection Mr. Thomas.
Mr. Thomas: I would, I would never object to another of this Court being present.
The Court: But I don't want your client there.
Mr. Farmer: Okay.
[Mr. Thomas never contacted Mr. Farmer, but opened the box secretly on his own. $200,000 is either missing, lost, or stolen.]